

ABC NIGHTLINE
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KOPPEL: Good evening. I'm Ted Koppel, and this is Nightline. IAN SHOALES: Sticks and stones might break the bones, but it's the printed word that brings in the lawyers.

KOPPEL: And more recently, it's also brought in the kind of public figures we're not used to seeing in multimillion-dollar libel suits, Gen. William Westmoreland and Israel's former Defense Minister Ariel Sharon to name just two.

Is it an effort at intimidation or just an attempt to keep an increasingly powerful news media accountable? We'll talk with a leading media critic, Mobil Oil Vice President Herbert Schmertz, and with New York Times columnist Anthony Lewis. We will also hear more from satirist Ian Shoales.

ANNOUNCER: This is ABC News Nightline. Reporting from Washington, Ted Koppel.

KOPPEL: It is, when you think about it, kind of a cockeyed scheme. The idea was to send out this letter to approximately 1 million people, identified as conservatives, urging them to buy up CBS stock. The letter dated 11 days from now, that is Jan. 21, was drafted, printed up over the signature of North Carolina Sen. Jesse Helms and urged the stock-buying program so that conservatives could, and this is a quote, 'if necessary, take control of that network, CBS, and become Dan Rather's boss.' SEN. JESSE HELMS (R-N.C.): I say that I think we've hit a nerve, however.

VOICE OF UNIDENTIFIED FEMALE REPORTER: A nerve, however, ah, in what way?

HELMS: Well, all the calls. Barbara says we've had a number of calls today. That's good, but I'll talk to you later on about it.

VOICE OF UNIDENTIFIED FEMALE REPORTER: What, that's good, how? What, what's the purpose? Why is it good? HELMS: Well, if the people are interested in it, that's fine.

KOPPEL: Well, a North Carolina newspaper, the News and Observer of Raleigh, got

hold of a copy of the letter, printed it, and whether it will now actually be sent out, nobody is saying, at least not in Sen. Helms' office. But it does underscore the level of frustration that many people feel with the media. Whether it's buying a controlling interest in CBS in order to muzzle its principal news anchor or taking the media to court, there is a growing sense, as

Nightline correspondent Jeff Greenfield reports, that someone ought to do something about us.

VOICE OF UNIDENTIFIED MALE: Live at 5.

UNIDENTIFIED MALE REPORTER (1982): The U.S. Justice Department is investigating the Green administration, including the mayor himself, for allegations of bid-rigging contracts and possible kickbacks amounting to \$50,000.

GREENFIELD: It sounded like a terrific scoop for Philadelphia TV Station WCAU. There was only one problem. It wasn't true.

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WILLIAM GREEN (former Philadelphia mayor): I am telling you your story is false and malicious. And I am, one, not under investigation, and I will tell everybody here that I have never....

UNIDENTIFIED MALE REPORTER: That's the real question I'm after.

GREENFIELD: The next day, the station apologized to the mayor.

UNIDENTIFIED MALE REPORTER: We really try very hard every night to be accurate and objective and not to make mistakes. In the case of the one aspect of the story, Mayor Green, we made a mistake.

GREENFIELD: But Mayor Green wanted more than an apology. He sued Channel 10 for libel and settled for a reported \$250,000. GREEN: Well, I mean, I, I think if they cross the line, they error (sic), if they, in effect, violate the law, if, if they are subject to legal sanctions as a result of the egregious conduct, just like public officials should if they're corrupt or do whatever, they, they should pay the price and the penalty.

GREENFIELD: At times these days, it seems as if a parade of prominent public figures is seeking to bring the press before the bar of justice, asking damages for libel: former Vietnam Commander Gen. William Westmoreland suing CBS News, former Israel Defense Minister Ariel Sharon suing Time magazine, South Dakota Gov. William Janklow suing author Peter Mathison, United States Sen. Paul Laxalt suing a chain of California newspapers. The press expects public officials to live by the maxim of Harry Truman. If you can't stand the heat, stay out of the kitchen. Free speech, we've always said, means that public debate is going to be rough, sometimes unfair, even malicious. What public officials and their allies are now arguing is a new premise, that the media themselves have grown so powerful, so unaccountable that the only remedy even for visibly powerful men and women lies not in the court of public opinion but in the courts of law. FLOYD ABRAMS (First Amendment lawyer): I think what's in the air is the sense that the public may be ready for the press to be punished, not the judges or not just the judges, but that the public may find it acceptable, even attractive that the press be cut a few pegs down and the so-called liberal press in particular.

GREENFIELD: Ironically, this spate of suits comes 20 years after the Supreme Court, in the landmark New York Times against Sullivan case, appeared to make it harder for public officials to win libel suits. The court said that these officials had to prove that what was said about them was not simply false and defamatory but was either knowingly or recklessly false. Are these suits today an attempt to intimidate the press? Journalist Nat Hentoff: NAT HENTOFF (journalist): Self-censorship is one of the, ah, the most pervasive phenomena in our business, especially when people are getting very edgy about libel. All this begins to sort of seep. There's no big chill, you know, the so-called chilling effect. It's just a little frost. GREEN: I believe that the Constitution was meant to chill the lie, to freeze it dead. And, ah, and you're given certain legal remedies when you have been egregiously wronged, and you should exercise them.

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VOICE OF UNIDENTIFIED MALE (ABC News): Did the Central Intelligence Agency try to have Ronald Rewald killed to keep him from talking?

GREENFIELD: This ABC News report last September added a new dimension to the debate. The Central Intelligence Agency, angered over a report alleging a possible agency threat on the life of a rogue employee, filed a Fairness Doctrine complaint before the Federal Communications Commission. The agency argued, in effect, that it had been libeled. ABC later backed off from its allegation, citing doubts about its source, Scott Barnes.

PETER JENNINGS (ABC News): So ABC news has now concluded that Barnes's charges cannot be substantiated, and we have no reason to doubt the CIA's denial.

GEORGE CLARKE (CIA associate counsel): The issue in this case is not whether or how much CIA has been damaged, although we certainly don't like what was said about us. The issue in this case is the public's right to be fairly and adequately informed under the First Amendment.

GREENFIELD: So essentially, what, what you're looking for then is not to put ABC News outta business but... CLARKE: To give it a slap on the wrist.

GREENFIELD: ABC News executive David Burke. DAVID BURKE (ABC News vice president): I find something disquieting in a government agency, especially an agency like the Central Intelligence Agency, appealing to another government agency, which is a regulatory agency and has control over our very economic life, on the question of our news judgment.

GREENFIELD: Today, the FCC dismissed the agency's complaint, finding no evidence that ABC had knowingly distorted the story. ~~While big news~~ organizations get all the publicity, libel suits are felt with particular force at small news organizations like the Main Line Chronicle in suburban Philadelphia. Its entire editorial focus has been changed by its owner because of libel suits. A few years ago, the Chronicle was a feisty, muckraking weekly.

Now, after losing six-figure libel verdict, the Chronicle has become a showbiz-oriented, noncontroversial paper. IRV LIBERMAN (publisher, Main Line Chronicle): I will always feel this way, probably, that I have, that I have abandoned part of being, part of the privilege of being in the newspaper business in a free country like the United States of America.

GREENFIELD: Liberman says his insurance carrier almost dropped the Chronicle from libel protection. And the weekly Philadelphia paper, Welcomat, facing several big libel suits, found its insurance suddenly canceled and had to scramble for cover. DAN ROTTENBERG (editor, Welcomat): And had we not been able to replace that coverage, we'd just have to give up the format we have now and go back to being a very con, conventional, pedestrian weekly newspaper, I guess publishing press releases and things like that.

GREENFIELD: Bruce Fein, who was a lawyer with the Federal Communications Commission, says this misses the point. BRUCE FEIN (former FCC lawyer): What's

at issue is the right of the press basically to lie. That is, should the press be guaranteed legal immunity knowingly and intentionally to lie? GENE ROBERTS (The Philadelphia Inquirer): It...(unintelligible)...the American system, and

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we are tampering in the last three or four years that has endured and kept this country great for 180 years. And we are gonna regret it, ah, ah, very, very seriously, in my opinion.

GREENFIELD: A free press is supposed to protect the public, its right to facts and to wide-open debate about its country. Are these libel suits a threat to that right or a necessary check on a press that has run roughshod over the rights of public citizens? This is Jeff Greenfield for Nightline in New York.

KOPPEL: When we return, we'll talk live with Mobil Oil Vice President Herbert Schmertz. His company has taken out special insurance to permit its top 100 executives to sue for libel without the worry of legal fees. And with New York Times columnist Anthony Lewis, who says something strange is happening to libel suits in the United States.

KOPPEL: With us now live from Los Angeles, Herbert Schmertz, vice president for public affairs of the Mobil Oil Corporation and one of the nation's most outspoken and articulate media critics, and in our Boston bureau, Anthony Lewis, New York Times columnist, who has written frequently about libel law and its potential abuse as a means of intimidating journalists.

KOPPEL: Tony, some of those who argue against the right of prominent public officials to sue journalists say these prominent public officials have the opportunity to make their own point of view known in more or less the same form.

That was not, however the case, was it, with Gen. Westmoreland? No one was really paying any attention to this retired general. ANTHONY LEWIS (the New York Times): Well, in fact, after the matter became controversial because of a, an article in TV Guide criticizing the CBS program, CBS offered Gen. Westmoreland, as I recall, 15 minutes of unedited air time in order to reply. And, as you know, that's a lotta time on television. He turned it down and sued instead.

KOPPEL: But that was way, way, way into the process, wasn't it? LEWIS: Yes, it was some months after the program. That's true.

KOPPEL: So if a 68-, 69-, 70-year-old general feels, 'Maybe I don't have the time to wait around for the media to spend a year or two years or three years catching up with my right to respond,' and that his reputation, he obviously felt, has been damaged during that period, why shouldn't he have the right to go to court? LEWIS: Well, what strikes me about all this, and not you so much, Ted, as the, the other people, is how unhistorical it is, what a radical change it is from the American tradition. You know, far worse things were said about George Washington and Thomas Jefferson and Abraham Lincoln or; more recently, Earl Warren than were said about Gen. Westmoreland, and they didn't sue. They did the job they were there to do and they bore it on the Truman heat-in-the-kitchen theory.

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KOPPEL: Well, Herb Schmertz, is it just that our, our public officials are less tolerant than they once were, or is it that, particularly because of television,

more people are hearing some of these libelous or nonlibelous statements?

SCHMERTZ: Well, there's no doubt that the press is substantially more powerful than the times that Tony was talking about, but his historical reference isn't exactly right. Thomas Jefferson, when he was president, filed a libel suit.

He lost it, but he filed a libel suit, and Thomas Jefferson was one of the great defenders of the right of people to file libel suits in the state courts. But I

think what you have since 1964 with the Sullivan case is a new kind of journalism. I think that the journalists felt that the Sullivan case gave them an immunity as a result of the tremendous burden that claimants would have, but they felt could just about do anything they wanted. And I think you have emerging now a feeling on the part of the press that they're somehow above the

law, that they can make false statements about people, that they can damage people, and they don't have to suffer the consequences.

KOPPEL: Hold on just a second. Yeah, if I may, let me just interject another question to Herb Schmertz. If you say that they feel they can make, knowingly make untrue statements about people, that, in a sense, comes pretty close to proving the malice that would still make them vulnerable to a libel suit, wouldn't it? I can't, I can't really believe that you think the responsible news organizations in this country knowingly go around telling untruths. Do you

believe that? SCHMERTZ: Well, well, Ted, I think the Sullivan case gave them a

feeling that it's almost impossible, because of the cost and burden, for a plaintiff to win a case. Now what's happened is plaintiffs have proved that they can win cases, so now people like Tony Lewis are saying, 'We have to find another way of handling these,' and he really wants to go to the law of the jungle, get these out of the courts and substitute some sort of a jousting test whereby the, the, the aggrieved would look to the person who caused the problem to solve it. It just seems to me very simple that I don't see how protecting falsehood helps in the search for truth. It just doesn't make sense.

KOPPEL: All right. I'm gonna, I'm gonna pull back to a neutral corner. Go, Tony. LEWIS: Thanks, Ted. You know, I repeat, I repeat how amazing it is to hear these radical suggestions coming from you, Herb, and offering them as if they were the conservative view. You know, we had a law in this country...

SCHMERTZ: I don't know what those words mean. LEWIS: Back in 1798--that's a while ago--Congress passed a law doing what you want to do, to shut up the press. It was called the Sedition Act, and it punished false and malicious statements about the president, members of Congress, and so on, and Jefferson and Madison thought it was unconstitutional, and the Supreme Court has so said. And the reason is simple. In this country, we have an open debate. Sometimes it's abusive. It's different from other countries, but when it comes to public officials and policy, it's free and open. Now, I'd like to ask... SCHMERTZ:

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Let me read you what... I want to read you what Jefferson wrote to Abigail Adams about the very law you're talking about. LEWIS: Oh, we all... SCHMERTZ:

"Nor does the opinion of the unconstitutionality and consequent nullity of the law remove all restraint from the overwhelming torrent of slander which is confounding all vice and virtue, all truth and falsehood in the United States now." (All talking at once.)

KOPPEL: Hold it! Gentlemen, I'll tell you what. As the lawyers like to say, let it be stipulated that Thomas Jefferson was one hell of a fella. Why don't we hear... SCHMERTZ: Well, he said...

KOPPEL: Why don't we hear from Herb Schmertz and Tony Lewis. I want to know what you guys think, not what Jefferson said 200 years ago. SCHMERTZ: But he's

wrong about Jefferson, Ted. LEWIS: Ted, I'd like to put this one. The truth is, of course, that Jefferson, though he detested the press as president, was prepared to bear it. That's the difference. But now let's add to this, Herb, my point about how the radical change is coming from you guys, not from the press. The Sullivan case. In that case 20 years ago, the anti-civil rights people, the white supremacists in the South, decided to use libel suits as a new

political weapon. They sued the New York Times, this one fellow, for \$500,000 because of an ad that made trivial mistakes, saying, for example, that Dr. King had been arrested seven times in Alabama instead of four, and on the basis of those trivial mistakes, a jury awarded \$500,000 to Commissioner Sullivan.

That's what went to the Supreme Court, a suit not designed to repair reputation,

but a political lawsuit designed to keep the press... SCHMERTZ: And a political decision, a political decision by the court, which had no precedent and reversed the 1954 *Bonhausen case, where Frankfurter said that defamation is not a protected act under the Constitution. LEWIS: Well, there you have it.

KOPPEL: Gentlemen, excuse me. I'm, I'm gonna invoke the MEGO factor. M-E-G-O.

Mine eyes glaze over. You're, you're, you're startin' to, you're startin' to hit me with all these legal decisions. What I really want to know is what is going on in America today. LEWIS: All right. I'll tell you what's going on. SCHMERTZ: The press, the press is finding out that the immunities they thought they got under Sullivan are really counterproductive to them because they're finding out that people can win lawsuits. I just have one simple question for Tony. How does the protection of falsehoods lead to the finding of truth? It just doesn't... I don't understand that. It's like sayin' that a doctor who leaves a sponge in an appendix is not gonna be liable and that's gonna lead to better operations later. LEWIS: I wish Madison were alive to answer that question for you, Herb. SCHMERTZ: Well, he's not, Tony, so it's yours.

KOPPEL: Don't. Let's stick, let's stick with 1984. You answer his question. LEWIS: The answer is that in our system, we know there are no absolute truths. We have a combat, a competition of different views. That's what America's all

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about, because there's no one person who can tell you, 'That's true; that's false.' We have a clash of views. (All talking at once.)

KOPPEL: Hold it just a second, Herb. SCHMERTZ: That's what juries, that's what juries are for.

KOPPEL: Let me interrupt one more time, and then I really will step back again.

Tony, I want you to take the other point of view now. I want you to take a look at us in the media. Are we too big? Are we too arrogant? Are we taking too much for granted? Do we deserve to be taken down a couple of pegs? And you know that there are 48 million people out there right now saying, 'You bet you are!' LEWIS: Well, as they say, I'm glad you asked that question. 'Cause it happens I'm very critical of the media, and I happen to care a lot about reputation. I believe in its protection. I think it's important. And when I see Mayor Green, I'm with him, and he sued for an amount that reflected a concern for reputation, \$250,000. When Sen. Laxalt sues for \$250 million, he's not interested in reputation, in my judgement. He's out to intimidate the press, and that's the difference. Of course we can be arrogant. Of course we make mistakes. But I know from the people that I've seen in the media that we try our best to do an honest job, and, moreover, we criticize each other a lot, and I think maybe more freely than the people in the Mobil Corporation criticize each other.

KOPPEL: All right. Now, Herb, you make the same kind of effort to take it from the other point of view. You've got lots of friends in the media, and you know we're not a bunch of, of *twits, by and large. SCHMERTZ: Right. There's no doubt that the vast majority of the media are hard working, decent, dedicated people, but it is also true that there has emerged a type of journalism that thinks that they really are above the law, and there are some journalists who feel that really they, they, they should have or do have this kind of immunity.

KOPPEL: Are you also prepared to concede that there are some people now in government, in big business who are really trying to scare the dickens out of the media? SCHMERTZ: No, I will concede that there are people in big government and big business who want to chill a certain kind of thing. They want to chill untruths, and I think that's fine. I mean, all the media has to do is tell the truth and there's no problem. LEWIS: Ah, if only truth were that easy to define. SCHMERTZ: Well, that's what, that's what we have juries for. LEWIS: I'd, I'd like to say one word about the word big. People have...

KOPPEL: We're down to our last 45 seconds, Tony, so go ahead. LEWIS: OK.

And it's this. Sure, some media are big. A lot of little papers, as we heard before, have been hurt. But why do we have big media. In part because we have big government, government a thousand times bigger than Madison and Jefferson knew, with immense power over all the citizens, and the only check on it is a stronger press.

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KOPPEL: All right. Herb, you got, you got the last word. SCHMERTZ: Well, I don't think that's why we have big media. We have big media because the big media conglomerates are buying up all the small companies. More small newspapers have been put out of business by big media companies than by any libel suit.

KOPPEL: All right. On that chilling note, let me thank you both. Herb Schmertz, Tony Lewis, it was good of you to join us. When we come back, another view on libel suits from satirist Ian Shoales.

KOPPEL: We asked satirist Ian Shoales to take a look at the topic of libel suits for us, and in his commentary, he poses this question. Is protecting your reputation really worth the fuss?

SHOALE: My high school principal threatened me once with a libel suit. He wouldn't relax the dress code, so I called him a fascist in the high school paper. I don't why he got so upset. When I called my parents fascists, all they did was kick me out of the house. This was the '60s, of course. The principal let it drop. I got a hair cut and moved back home. But it just goes to show the life of a social critic isn't all beer and skittles. Sticks and stones might break the bones, but it's the printed word that brings in the lawyers, which makes me wonder. What is honor in the modern world? When you say, 'That insults me,' does it really mean, 'My lawyers think I have a good case.' Does prestige come with a legal retainer? Can a blush be entered as evidence? A damaged reputation is a rich man's burden once avenged with duels, and I enjoy the image of Gen. Westmoreland and the 60 Minutes crew taking measured paces with pistols at dawn, but those dueling days are gone, and the days when the word had cutting power is gone too. Take the bizarre case of Falwell versus Flynt. I don't hold Rev. Falwell as a role model, though he certainly has a reputation to uphold, but how can anything said by Mr. Flynt possibly affect that reputation? How seriously can you take Hustler's opinion on anything? Take the National Enquirer. CAROL BURNETT (actress): It is disgusting, and it is a pack of lies.

SHOLES: Suing them is like calling a liar a liar. You're not fooling anybody or changing anything. You're only translating your embarrassment into a court settlement, and it's the lawyers who get most of the blood from the stone of libel suits. All of this just goes to show, I'm glad I'm not in high school anymore. I'm too old, for one thing. I don't have a lawyer, for another. And it shows that those who say the pen is mightier than the sword are liars. Ask yourself. Would you rather be called nasty names in the newspaper or pierced with a sharp instrument? No contest. I don't care what you call me. I've called myself worse. Compared with the real problems of the world, humiliation is a minor and temporary inconvenience. Only now in these self-indulgent times is personal embarrassment considered a tragedy. That's my opinion. If you don't like it, sue me. I gotta go.

KOPPEL: That's our report for tonight. I'm Ted Koppel in Washington. For all of us here at ABC News, good night.